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IN THE UNITED STATES DISTRICT COURT
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FOR THE TERRITORY OF GUAM
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UNITED STATES OF AMERICA,
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9
Plaintiff,
vs.

10 JEREMIAH SANTOS ISEZAKI,

11 Defendant.

CRIMINAL CASE NO. 12-00025

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ORDER
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This matter is before the court on the Defendant's Motion for a Judgment of Acquittal after Jury Verdict or Discharge. *See Mot.*, ECF No. 58. The Defendant contends that the evidence presented at trial was insufficient to sustain a conviction for felon in possession of a firearm. For the reasons set forth below, the motion is **DENIED**.

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I. BACKGROUND
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On April 11, 2012, the Defendant was indicted on Count I, Felon in Possession of a Firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). *See Indictment*, ECF No. 1.

The case proceeded to trial on June 12, 2012. At the close of the Government's case, the Defendant moved the court for a judgment of acquittal pursuant to FED. R. CRIM. P. 29(a). *See Min.*, ECF No. 45. The court found that the evidence was sufficient to sustain conviction on the count charged in the Indictment and denied the motion. At the close of all the evidence, the Defendant renewed his motion, which this court also denied. *Id.*

II. DISCUSSION

The Defendant now moves this court for judgment of acquittal pursuant to FED. R. CRIM. P. 29(c).¹ See Mot., ECF No. 58.

After the return of a guilty verdict and upon motion of a defendant, the court may set aside the verdict and enter an acquittal if the “evidence is insufficient to sustain a conviction.” FED. R. CRIM. P. 29. To determine whether the evidence is sufficient to sustain a conviction, the court must “construe the evidence ‘in the light most favorable to the prosecution,’ and only then determine whether ‘any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *United States v. Nevils*, 598 F.3d 1158, 1161 (9th Cir. 2010) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). See also *United States v. Meredith*, 685 F.3d 814, 819 (9th Cir. 2012). Moreover, the jury’s exclusive function is to “determine the credibility of the witnesses, resolve evidentiary conflicts and draw reasonable inferences from proven facts.” *United States v. Nelson*, 419 F.2d 1237, 1241 (9th Cir. 1969). “Circumstantial evidence and inferences drawn from it may be sufficient to sustain a conviction.” *United States v. Reyes-Alvarado*, 963 F.2d 1184, 1188 (9th Cir. 1992).

In the present motion, the Defendant challenges the sufficiency of the evidence. *See Mot.*, ECF No. 58. Defendant argues that there was insufficient evidence presented to the jury to prove he was a felon in possession of a firearm. *Id.*

In order for the Defendant to be found guilty of Count I, Felon in Possession of a Firearm, the court instructed the jury that the Government had to show beyond a reasonable doubt, that: (1) the defendant knowingly possessed a Colt 45 pistol, Serial number 281587-C; (2) the Colt 45 pistol, Serial Number 281587-C had been shipped or transported from one state to the territory of Guam; and (3) at the time the defendant possessed the Colt 45 pistol, Serial

¹ It should be noted that despite a briefing schedule issued by this court on August 16, 2012, the Defendant did not submit a reply to the Government's opposition. *See Order*, ECF No. 66.

1 Number 281587-C the defendant had been previously convicted of a crime punishable by
2 imprisonment for a term exceeding one year, prior to January 30, 2012. *See* Ct.'s Inst. No. 13,
3 ECF No. 47.

4 Element 3 is not an issue in this case. The parties stipulated that "prior to January 30,
5 2012, the defendant was convicted of a crime punishable by imprisonment for a term exceeding
6 one year." *See* Stip., ECF No. 46. Thus, the only issues are Elements 1 and 2.

7 **a. Element 1: The Defendant knowingly possessed a Colt 45 pistol, Serial Number
8 281587-C**

9 The court defined "possession" to mean "[a] person has possession of something if the
10 person knows of its presence and has physical control of it, or knows of its presence and has the
11 power and intention to control it." *See* Ct.'s Inst. No. 12, ECF No. 47. The court also instructed
12 the jury that the definition of "knowingly" means "[a]n act is done knowingly if the defendant is
13 aware of the act and does not act through ignorance, mistake, or accident. You may consider
14 evidence of the defendant's words, acts, or omissions, along with all the other evidence, in
15 deciding whether the defendant acted knowingly." *See id.*, No. 15, ECF No. 47.

16 During the trial, the Government presented two witnesses who testified that they either
17 saw the satchel containing the firearm on Defendant's person and/or within the reach of the
18 Defendant. Guam Police Department ("GPD") Officer Raymond Aguon Charfauros testified that
19 during the motorcycle chase, when they were trying to "box him [the Defendant] in" at the
20 parking lot of a video store, Officer Charfauros spotted the Defendant with a satchel on his right
21 side. Officer Charfauros further testified that when he found the Defendant in the jungle
22 thereafter, the Defendant was lying down on the ground and near him was the satchel. After the
23 Defendant was cuffed, Officer Charfauros inspected the satchel wherein he found a firearm
24 wrapped in a blue towel. As part of GPD's confiscation procedure, Officer Charfauros noted the
model of the firearm—Colt 45 pistol, Serial Number 281587-C—on the evidence/property

1 custody receipt. The satchel and the firearm were admitted into evidence during trial without
2 objection.

3 GPD Officer Eddie B. Tiamzon testified that he witnessed the Defendant sitting in the
4 jungle area and also witnessed Officer Charfauros pick up a green satchel that was within arm's
5 reach of the Defendant. When Officer Charfauros opened the satchel in Officer Tiamzon's
6 presence for inspection, Officer Tiamzon testified that it contained the Colt 45 pistol, Serial
7 Number 281587-C.

8 During the trial, Defense counsel pointed out that the items seized that evening, including
9 the firearm itself, were not sent to a crime laboratory for fingerprinting. In addition, counsel
10 criticized GPD officers for their failure to interview Mr. Flores whose identification card was
11 found in the backpack² and to interview the residents that were in the surrounding area of the
12 jungle where the Defendant was found and arrested. Further, defense counsel cautioned the jury
13 to consider the following inconsistencies: (1) Officer Charfauros stated during direct
14 examination that the Defendant was holding a cellular phone on his left hand, but in a previous
15 statement made by Officer Charfauros, he indicated that the phone was on Defendant's right
16 hand;³ and (2) Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") Task Force
17 Officer Raymond Joseph Blas indicated in his report that the firearm was found in the backpack,
18 whereas GPD Officers Tiamzon and Charfauros testified that the firearm was found in the
19 satchel.⁴

20
21 ² The backpack is separate from the satchel bag that the Defendant was carrying during the motorcycle chase
and when apprehended in the jungle.

22 ³ Officer Charfauros reconciled the inconsistency by explaining that the phone was initially on Defendant's
left hand but later switched the phone to his right hand prior to dropping it on the ground.

23 ⁴ Officer Blas admitted that he made a mistake when he wrote the report. Officer Blas himself was not
present during the motorcycle chase or when the Defendant was apprehended in the jungle. Officer Blas wrote his
report by reviewing the GPD report and inadvertently made the mistake of stating that the firearm was found in the
backpack rather than the satchel.

1 The Ninth Circuit in *Nevils* stated that “the government does not need to rebut all
2 reasonable interpretations of the evidence that would establish the defendant’s innocence, or
3 ‘rule out every hypothesis except that of guilt beyond a reasonable doubt.’” 598 F.3d at 1164
4 (quoting *Jackson*, 443 U.S. at 326). This court instructed the jury that “[p]roof beyond a
5 reasonable doubt is proof that leaves you firmly convinced the defendant is guilty. It is *not*
6 *required* that the government prove guilt beyond *all* possible doubt.” *See* Ct.’s Inst. No. 5, ECF
7 No. 47 (emphasis added).

8 Based on the testimony presented by the Government, there is sufficient evidence that the
9 Defendant knowingly possessed a Colt 45 pistol, Serial Number 281587-C. During the
10 motorcycle chase, Officer Charfauros saw the satchel on Defendant’s person. Later that evening
11 when the Defendant was on the ground in the jungle, Officers Charfauros and Tiamzon saw the
12 satchel near the Defendant, within his reach. Upon inspection of the satchel, Officer Charfauros
13 discovered the firearm. Viewing the evidence in the light most favorable to the Government, any
14 rational trier of fact could have found that the Defendant was in possession of a firearm.

15 **b. Element 2: The Colt 45 pistol, Serial Number 281587-C had been shipped or
16 transported from one state to the territory of Guam**

17 An expert witness,⁵ ATF Task Force Officer John Quintanilla, testified that the Colt 45
18 pistol, Serial Number 281587-C, was manufactured in Hartford, Connecticut and as such, the
19 firearm was shipped or transported to Guam. Officer Quintanilla also stated that there are no gun
20 manufacturers in Guam. Officer Quintanilla’s testimony was based on his expertise after
21 conducting a trace and research on the firearm.

22 ⁵ The court declared Mr. Quintanilla as an expert witness pursuant to FED. R. CRIM. P. 702. *See* Min., ECF
23 No. 45.

24 In addition, the court instructed the jury that an “expert witness” is one “who, because of his education or
experience, was permitted to state opinions and the reasons for his opinions. Such opinion testimony should be
judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves,
considering the witness’s education and experience, the reasons given for the opinion, and all the other evidence in
the case.” *See* Ct.’s Inst. No. 9A, ECF No. 47.

Viewing the evidence in the light most favorable to the Government, any rational trier of fact could have found that the Colt 45 pistol, Serial Number 281587-C, was shipped or transported from one state to the territory of Guam.

III. CONCLUSION

The court finds that the Government presented evidence sufficient to support a jury's guilty verdict on Count I – Felon in Possession of a Firearm. Accordingly, the court **DENIES** the Defendant's motion.

Responses to the Draft Presentence Report shall be filed by October 24, 2012. The due date for the Final Presentence Report and the Sentencing Date as previously ordered by this court remain the same. *See Order*, ECF No. 72.

IT IS SO ORDERED.



**/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Oct 10, 2012**